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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No. 2:19-cr-270-JAD-BNW

Plaintiff,

MOTION TO RESTRAIN TRANSFER OF INHERITANCE FUNDS

V.

ROBERT CORTEZ MARSHALL,

Defendant.

14 The United States of America, by and through CHRISTOPHER CHIOU, Acting
15 United States Attorney for the District of Nevada, and Assistant U.S. Attorney Jim W.
16 Fang, hereby submits this memorandum in support of its motion to restrain defendant
17 Robert Cortez Marshall's dissipation of assets.

I. Introduction

19 The government moves this Court, pursuant to the All Writ's Act, 28 U.S.C. §
20 1651, for an order restraining defendant and his representatives, attorneys, agents, family
21 members, and assigns from transferring, selling, encumbering, spending or attempting or
22 completing any action that would affect or diminish the value of specific property of or
23 under the control of the defendant. Specifically, the government seeks the restraint of an

1 inheritance received or to be received from one of defendant's grandparents¹ so that the
 2 funds are available for payment toward restitution pursuant to the Mandatory Victim
 3 Restitution Act ("MVRA"), 18 U.S.C. § 3663A.

4 **II. Statement of Facts and Procedural History**

5 On September 13, 2021, defendant pleaded guilty to one count of Wire Fraud in
 6 violation of 18 U.S.C. § 1343 stemming from his role in what was essentially a Ponzi
 7 scheme. EFC Nos. 98, 99 at 8-9. As part of the defendant's guilty plea, he executed a plea
 8 agreement in which he acknowledged that "defendant will be required to pay full
 9 restitution to the victim of the offense to which defendant is pleading guilty." ECF No. 99
 10 at 5. The plea agreement also states:

11 To facilitate payment of any fine, restitution, or assessment, surrender assets
 12 defendant obtained directly or indirectly as a result of defendant's crimes.
 13 Defendant agrees to voluntarily release funds and property under defendant's
 14 control or in which defendant has any property interest, before and after
 15 sentencing, to pay any fine or restitution identified in this agreement, agreed
 16 to by the parties, or ordered by the Court.

17 *Id.* at 3. Restitution is likely to be in the millions, with the government's estimate being
 18 over \$3 million.

19 On March 24, 2022, defendant filed an Emergency Motion to Modify Conditions
 20 of Release. ECF No. 117. Therein, he requested that "he be allowed to find and relocate to
 21 a new residence; and to travel to a bank to open an account and deposit an inheritance
 22 check." *Id.* at 1. Defendant revealed that he received an inheritance check from his
 23 maternal grandmother, Ms. Gray. *Id.* at 3. Defendant did not disclose the amount of the
 24 inheritance check. *Id.* The government timely filed a response to defendant's motion and

¹ Such inheritance was described in the defendant's Emergency Motion to Modify Conditions of Release. ECF No. 117 at 3.

1 requested that his request to deposit his inheritance check to be used for the acquisition of
 2 a replacement residence be denied by the Court. ECF No. 119 at 4. The government
 3 further indicated that it would file a separate motion requesting the application of
 4 defendant's inheritance toward the payment of his anticipated criminal monetary
 5 penalties. This motion follows.

6 **III. Points and Authorities**

7 The Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A-3664, requires the
 8 Court to impose restitution for victims of offenses committed by fraud or deceit. 18 U.S.C.
 9 § 3663A(c)(1)(A)(ii). This includes defendant's conviction for Wire Fraud. *United States v.*
 10 *Matsumaru*, 244 F.3d 1092, 1109 (9th Cir. 2001).

11 The government enforces orders of restitution through the Federal Debt Collection
 12 Procedures Act ("FDCPA"), 28 U.S.C. §§ 3001 et seq., and "by all other available and
 13 reasonable means." 18 U.S.C. 3664(m). The FDCPA authorizes the Court to utilize the
 14 All Writs Act, 28 U.S.C. § 1651, to support any of the remedies set forth in the FDCPA.
 15 28 U.S.C. § 3202(a). "The All Writs Act enables federal courts to 'issue all writs necessary
 16 or appropriate in aid of their respective jurisdictions and agreeable to the usages and
 17 principles of law.'" *United States v. Catoggio*, 698 F.3d 64, 67 (2d Cir. 2012) (citation
 18 omitted). "The broad power conferred by the All Writs Act is aimed at achieving 'the
 19 rational ends of the law,' and courts have significant flexibility in exercising authority
 20 under the Act." *Id.* (*citing United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172-73 (1969)).

21 The All Writs Act has been used to restrain defendants from dissipating assets post-
 22 conviction, but prior to sentencing. *See, e.g., United States v. Abdelhadi*, 327 F. Supp. 2d 587
 23 (E.D. Va. 2004); *United States v. Gates*, 777 F. Supp. 1294 (E.D. Va. 1991); *United States v.*
 24 *Numisgroup Intl. Corp.*, 169 F. Supp. 2d 133, 138 (E.D.N.Y. 2001) (upholding All Writs

1 Act authority to authorize restraint of assets where “sentencing and a substantial Order of
2 Restitution is imminent”; post-conviction, the defendants “no longer are bathed with the
3 presumption of innocence”).

4 In *Gates*, the court stated:

5 If a trial court does not have authority to order a defendant, post-conviction
6 but prior to sentencing, not to dispose of his assets, then the court is without
7 any meaningful ability to impose a proper sentence under the guidelines and
8 to fulfill the intent and mandate of Congress that a financially able defendant
9 pay fines and costs of prosecution, incarceration, and supervised release or
probation. In effect, the court's inability to prevent a convicted defendant
from disposing of his assets prior to sentencing would create a situation in
which it would only make sense for, and legal counsel would so advise, any
defendant with assets to “dispose of” or transfer them for ‘safekeeping.’

10 777 F. Supp. at 1296, n. 7.

11 The All Writs Act provides a necessary authority of the Court to secure assets of
12 the defendant post-conviction, but pre-judgment before the strictures of the FDCPA apply.

13 See *United States v. Swenson*, No. 1:13-cr-91, 2014 WL 2506300 (D. Idaho June 3, 2014)
14 (holding that Mandatory Victims Restitution Act authorization for enforcement of a
15 restitution by all “available and reasonable means” includes writs under the All Writs Act
16 issued in anticipation of an order of restitution because the delay between conviction and
17 sentencing “should not be an opportunity for a defendant to frustrate the sentencing by
18 disposing of assets.”); see also *United States. Catoggio*, 698 F.3d 64 (2nd Cir. 2012) (affirming
19 district court decision to restrain assets in anticipation of resentencing using the All Writs
20 Act) (collecting cases); *United States v. Yielding*, 657 F.3d 722 (8th Cir. 2011) (declining to
21 dissolve TRO issued to preserve assets for payment of restitution).

22 Here, defendant has not yet been sentenced, and therefore, the FDCPA’s post-
23 judgment enforcement remedies are not yet available. While various remedies will become
24 available to the government under the MVRA and the FDCPA to enforce collection of

1 any monetary penalties (including restitution), none of them can be instantly implemented
2 and none of them prevents a defendant or those acting on his behalf from dissipating
3 assets or otherwise secreting, wasting, or placing them beyond the government's reach
4 prior to sentencing. Importantly, defendant here has already agreed to pay restitution for
5 his victims. But, because there is no readily available remedy that can ensure the
6 effectiveness of the Court's upcoming restitution order, only the requested restraining
7 order can preserve defendant's inheritance and ensure its availability for payment toward
8 defendant's substantial restitution order. This request is further supported by the plea
9 agreement, wherein defendant expressly agreed to release funds and property under his
10 control to satisfy any criminal monetary penalties that might be ordered.

11 **IV. Conclusion**

12 Accordingly, as set forth herein, the Court is well within its broad authority
13 conferred by the All Writs Act to enter an order restraining defendant's dissipation of his
14 inheritance and requiring that defendant deposit such funds with the Court prior to
15 sentencing to ensure satisfaction of criminal monetary penalties, including restitution.

16 Respectfully submitted this 5th day of April 2022.

17
18 CHRISTOPHER CHIOU
Acting United States Attorney

19 _____
/s/ Jim W. Fang
20 JIM W. FANG
Assistant United States Attorney